

## INDEX

	Page
Opinion below .....	1
Jurisdiction .....	1
Questions presented .....	2
Statement .....	2
Argument .....	6
Conclusion .....	8

## CITATIONS

### Statutes:

#### Criminal Code:

Section 47 (18 U.S.C. [1946 ed.] 100) .....	2
Section 192 (18 U.S.C. [1946] ed. 315) .....	2



# **In the Supreme Court of the United States**

OCTOBER TERM, 1948

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No. 725

CLARENCE MILTON CALHOUN, ALVIS EARL LANHAM,  
AND J. B. RUSSELL, PETITIONERS

v.

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE FIFTH  
CIRCUIT*

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## **OPINION BELOW**

The opinion of the Court of Appeals (R. 313-316) is reported at 172 F. 2d 457.

## **JURISDICTION**

The judgment of the Court of Appeals was entered February 16, 1949 (R. 316), and a petition for rehearing (R. 317-319) was denied March 15, 1949 (R. 320). The petition for a writ of certiorari was filed April 14, 1949. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

**QUESTIONS PRESENTED**

1. Whether the trial court was warranted in finding that petitioner Lanham consented to the search of his home without a warrant.

2. Whether there was any search or seizure of which petitioner Calhoun had standing to complain.

**STATEMENT**

Petitioners were charged in a two-count indictment (R. 1-2) filed in the District Court for the Western District of Texas with forcibly breaking into a post office with intent to commit larceny therein (count 1), and with the theft therefrom of Government-owned money and other property (count 2), in violation of §§ 192 and 47 of the Criminal Code (18 U.S.C. [1946 ed.] 315, 100), respectively. Following a jury trial, each was found guilty on both counts (R. 289), and each was sentenced to five years' imprisonment and a \$500 fine on the first count and to three years' imprisonment on the second count, the latter term to commence at the expiration of the five-year sentence on the first count (R. 292-293). On appeal to the Court of Appeals for the Fifth Circuit, the judgments of conviction were affirmed (R. 316).

It is unnecessary to review the evidence supporting the convictions since petitioners do not question its sufficiency. The evidence is summarized in the opinion of the Court of Appeals (R. 314-315).

Prior to trial, petitioner Lanham moved to suppress the use as evidence of certain currency and

rolls of coins alleged to have been unlawfully seized from his home in a search without a warrant (R. 7-8). In a similar motion, petitioner Calhoun alleged that certain additional currency had been unlawfully seized "from him" in a search of different premises, also without a warrant (R. 10). The moneys involved in these motions were subsequently identified at the trial as part of the loot taken from the burglarized post office. Following a hearing (R. 14-62), both motions were denied without opinion (R. 8-9, 11-12, 62).

With respect to Lanham's motion, it was the Government's contention at the hearing that Lanham freely consented to and in fact cooperated in the search of his home without a warrant. With respect to Calhoun's motion, the Government's position was that Calhoun had no standing to object to a search, without warrant, of the premises described in his motion; and that in fact there was no search or seizure at all in view of the fact that the owner and occupant of the premises in question, one Tomme, waiving all requirements with respect to a warrant, freely admitted the officers to his home and voluntarily surrendered to them the money they sought, which was in his custody. The evidence adduced at the hearing in support of these contentions may be summarized as follows:

*Lanham's motion.*—Morrow, a post office inspector, testified that Lanham, shortly following his arrest, was interviewed by Morrow and several local peace officers in the local sheriff's office (R. 15, 25).

According to Morrow, Sheriff Ratliff said to Lanham, "Chick, we want to search your house. Now, we can get a search warrant or you can let us search it," to which Lanham replied, "I know you can get a warrant. Go ahead and search it" (R. 26, 29). According to police chief Ragsdale, who was also present, Lanham freely admitted to the officers that he had "some money down at the house" and offered to "take you down there and get the money" (R. 38). Lanham, accordingly, accompanied the officers to his home, unlocked the door himself, proceeded directly to a dresser drawer, removed the currency in question, and delivered it to the officers (R. 26). The rolls of coins were subsequently found by one of the officers in a box under the kitchen sink (R. 26-27, 42). At no stage of the proceedings was Lanham subjected to any compulsion, threats, or abuse (R. 30). In fact, Lanham at all times engaged in "good natured talk back and forth" with the officers (R. 28).

Morrow further testified that he knew "the laws relating to search warrants" and that the only reason he did not apply for a search warrant was the fact that Lanham consented to the search without a warrant <sup>1</sup> (R. 27).

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<sup>1</sup> The issue of whether or not Lanham consented to a search of his home without a warrant was also raised subsequently at the trial (R. 103-104). At that time, police chief Ragsdale testified that, after Lanham first consented to the search, he was asked, "Are you sure you do not require a search warrant?" and that Lanham made it perfectly clear that he had no objection to the search (R. 105).

*Calhoun's motion.*—Tomme, a cousin of Calhoun (see R. 200), testified that he, Tomme, resided with his wife and child in his own home at 802 Roxana Street, Odessa, Texas (R. 56). He permitted Calhoun to occupy a room in his home occasionally under an informal arrangement which did not involve the payment of rent (R. 56-57). Shortly following the theft from the post office, as charged in the indictment, Calhoun turned some currency over to Tomme with the request that he "put it away for him" (R. 57; see R. 201). Tomme placed the money in a locker under the bed in the room occupied by Calhoun, and locked the locker (R. 57, 59). This locker was the property of Tomme, and the key to it was kept by Tomme's wife (R. 59; see also R. 201-2). Tommie's reason for putting the money in this locker was to prevent his baby son from getting at it. Shortly thereafter, post office inspector Bell and several local peace officers went to Tomme's home and asked Tomme whether Calhoun had given him any money. Tomme replied in the affirmative, and told the officers where he had put the money. The officers asked Tomme "if they had to have a warrant to search the house." According to Tomme, "I told them no, and I went down and unlocked the locker and gave [the money] to them." (R. 58.) Tomme testified that he freely admitted the officers to his home, and "voluntarily turned over that money to the officers, at their request" (R. 59-60; see also R. 202).

Bell, the post office inspector who was among the officers who visited Tomme's home, corroborated Tomme's testimony in all respects (R. 60-61). Tomme told the officers, Bell added, that Calhoun "stayed with him a part of the time," that the room in which the locker was located "was occupied by Mr. Calhoun at the time he stayed there," and that the room "was also used by his [Tomme's] family" (R. 61). Bell further testified that Tomme's "family's clothes were hanging up in that room" (R. 61-62).

#### ARGUMENT

1. Petitioner Lanham contends that he did not freely consent to the search of his home without a warrant (Pet. 8-9), arguing that his "consent" was in reality merely "a submission to armed authority after verbal abuse with fear of personal violence \* \* \*, rather than a voluntary waiver of his constitutional right" (Pet. 9). It is clear, however, that in making this contention, Lanham assumes that the trial judge, who heard the witnesses in connection with the motion to suppress, was required to believe his version of the circumstances surrounding the giving of his consent to the officers (see Pet. 3). But Lanham's testimony, which was uncorroborated, was sharply contradicted by the officers. We have set forth the officers' testimony at pp. 3-4, *supra*, and submit that, if true, it plainly established consent to the search on Lanham's part. Indeed, so far as the



currency, at least, was concerned, there was no search at all, since Lanham voluntarily procured and surrendered it to the officers. The trial judge, after hearing the witnesses, accepted the officers' testimony, and the court below expressly concurred in this finding (R. 315). There is clearly no occasion for this Court to reexamine this factual issue.

2. Petitioner Calhoun contends that "the search" of "his" room in Tomme's house, without a warrant and without his (Calhoun's) consent, was an invasion of his rights under the Fourth Amendment, and rendered the fruits of "the search" inadmissible in evidence against him (Pet. 3, 5). The contention, however, ignores the facts, summarized above (*supra*, pp. 5-6), which were brought out at the hearing on the motion to suppress. Those facts—and they were uncontradicted—established that there was in reality no search or seizure at all. Tomme voluntarily admitted the officers to his home and freely admitted his receipt of money from Calhoun. Expressly waiving all requirements relative to a search warrant, Tomme led the officers to the room in his house where he himself had secreted the money in a locker, unlocked the locker, and handed the officers the money. The locker was Tomme's property, the key to it was kept in his wife's custody, and Tomme clearly had a right to enter this room in his own house. The bare fact, on which alone Calhoun relies, that Calhoun was permitted by Tomme to

occupy this room occasionally has no relevance in the light of these facts.<sup>2</sup>

#### CONCLUSION

The decision below is correct and there is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1949.

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<sup>2</sup> Lanham's and Calhoun's codefendant at the trial, Russell, is named as a petitioner in the petition for certiorari, but the petition makes no contention applicable to him.